



Commonwealth of Kentucky
Finance and Administration Cabinet
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December 2, 2010

No. 10-28

Leo Carson
Vice President of Strategic Sales
G4S Justice Services, Inc.
9609 Gayton Road, Suite 100
Richmond, VA 93238

RE: Determination of Protest: RFP 758 1000000252 (Home Incarceration Program – Electronic Monitoring).

Dear Mr. Carson:

The Finance & Administration Cabinet (the “Finance Cabinet”) is in receipt of your letter of protest to the award of RFP 758 1000000252 for Home Incarceration Program – Electronic Monitoring (the “RFP”). In the protest you contend that the proposal of G4S Justice Services, LLC (“G4S”) was not properly considered. For the reasons stated herein, this protest is denied.

FACTUAL BACKGROUND

The Finance Cabinet Office of Procurement Services (“OPS”) issued the RFP on February 22, 2010, on behalf of the Kentucky Department of Corrections. The RFP was modified three times. The RFP closed on March 31, 2010. The RFP sought proposals for continuous electronic monitoring equipment and service. RFP, Section 10.000. The RFP consisted of two sections; (1) the Technical Proposal and (2) the Cost Proposal. G4S submitted a proposal in response to the RFP.

After an evaluation, a contract was awarded on August 6, 2010 to Leimac Contracting, LLC (“Leimac”). On August 16, 2010 (received August 17th), G4S submitted an Open Records Request seeking documents relating to the proposals for and evaluation of the RFP to the Finance Cabinet. A production of requested documents was provided by the Finance Cabinet to G4S on August 18th. By letter dated August 20, 2010 (and filed on August 24th), G4S filed an initial protest. By letter dated August 27, 2010 (filed August 31st), G4S filed a supplemental protest. On August 30th Leimac’s counsel responded to the protest; on September 8, 2010,

Leimac's counsel submitted a response to the supplemental protest. On October 29, 2010, OPS submitted a written response to the protest.

DETERMINATION

After a review of the solicitation, the solicitation responses, the official findings, the applicable statutes and regulations, and other relevant information, the Secretary of the Finance and Administration Cabinet ("Secretary") finds and determines as follows:

Any actual or prospective bidder who is aggrieved in connection with the solicitation or selection for award of a contract may file a protest with the Secretary. KRS 45A.285. G4S was an actual offeror to the RFP so it has standing to protest the award.

A protest to an award must be made within two (2) calendar weeks within the date the protestor knew or should have known of the grounds for protest. KRS 45A.285. For purposes of computing the fourteen (14) calendar day deadline for the submission of a protest, the following legal presumptions apply:

- (a) For protests based upon alleged improprieties in a solicitation for bids or proposals which relate to the solicitation documents themselves, the facts giving rise to the protest shall be presumed to have been known to the protestor on the date the solicitation, or a modification to it, was posted to the Commonwealth of Kentucky's eProcurement web site. 200 KAR 5:380 (1) (a).
- (b) For protests based upon alleged improprieties in the award of a contract, the facts giving rise to the protest shall be presumed to have been known to the protestor on the date the contract award was posted to the Commonwealth of Kentucky's eProcurement web site. 200 KAR 5:380 (1).

A legal presumption is a fact assumed from the specific circumstances. The legal presumption in this case may be overcome upon presentation of evidence showing that the facts giving rise to the protest were not and could not have been known to the protestor on the date presumed by the regulation. 200 KAR 5:380 (1). The inquiry about when the protestor "knew or should have known" the factual basis giving rise to the protest is guided therefore by the (1) availability of the relevant facts and (2) the protestor's diligence to uncover those facts. *Matter of: Air Masters Corporation*, 92-2 CPD ¶299 (Comp.Gen. 1992) (protester must diligently pursue information that forms the basis of protest); *Warren Elec. Constr. Corp.*, 90-2 CPD ¶34. (Comp.Gen. 1990) (protester has an affirmative obligation to seek the information that forms its basis of protest).

In this case, a contract was awarded on August 6, 2010. In a document dated August 16, 2010 (received August 17th), G4S submitted an Open Records Request seeking documents relating to the proposals for and evaluation of the RFP. A production of requested documents was provided by the Finance Cabinet to G4S on August 18th. In a letter dated August 20, 2010 (and filed on August 24th), G4S filed an initial protest. By letter dated August 27, 2010 (filed August 31st), G4S filed a supplemental protest. In this case, the basis for supplemental G4S's protest was only apparent upon review of the proposals. The Secretary finds that both the initial and supplemental protests were filed within 2 calendar weeks of the date the protestor knew or should have known of the grounds for protest. This protest, accordingly, is timely.

This RFP was a “competitive negotiation” procurement conducted under 45A.085. The hallmark of “competitive negotiation” is discretion. Under the “competitive negotiation” scheme, a contract may be awarded “to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Commonwealth, taking into consideration price and the evaluation factors set forth in the request for proposals.” KRS 45A.085(6). The competitive negotiation process is intended to offer the buying agency more flexibility in drafting the content of the solicitation document and more flexibility in evaluating the resulting offerors. See, e.g., *Matter of: A & C Building and Industrial Maintenance Corporation* 88-1 CPD ¶451 (Comp.Gen. 1988).

The award of a negotiated procurement is a discretionary act by an agency. See *Laboratory Corp. of America Holdings v. Rudolph*, 4 S.W.3d 68, 75 (Ky.App. 2005); *Hensley v. City of Russell*, 2006 WL 2988174 (the award of a public contract is a purely discretionary act). The limits of discretion are not boundless, however; agency actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law will be overturned. See *Commonwealth of Kentucky v. Yamaha*, 237 S.W.3d 203, 206 (Ky. 2007).

The protester bears the burden of proof. See *Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen. 1987) (“protester has burden of demonstrating the merits of its case.”); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998). The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen. 1988). Moreover, a determination by an agency is entitled to a presumption of correctness. KRS 45A.280. The protestor must demonstrate the agency's action was arbitrary, capricious, or contrary to law. *Commonwealth of Kentucky v. Yamaha*, 237 S.W.3d 203, 206 (Ky. 2007). The Secretary will only intervene only when it is clear that the agency's determination was irrational or unreasonable. *Baird Corp. v. United States*, 1 Cl.Ct. 662, 664 (1983). An “alternative interpretation” of the terms of the solicitation will not establish an arbitrary or capricious determination. *Laboratory Corporation of America v. Rudolph*, 184 S.W.3d 68, 74 (Ky. App. 2006). In sum, the Secretary will not substitute his judgment on such matters reserved to the discretion of the agency. See *Laboratory Corp. of America Holdings v. Rudolph*, 4 S.W.3d 68, 75 (Ky.App. 2005) (award of a negotiated procurement is a discretionary act by an agency); *Hensley v. City of Russell*, 2006 WL 2988174 (award of a public contract is a purely discretionary act).

In addition to showing that the agency's action was arbitrary or capricious or otherwise inconsistent with law, a protestor must show that the agency's action was prejudicial. *Data Gen. Corp. v. Johnson*, 78 F.3d 1556, 1562 (Fed.Cir.1996) (“[T]o prevail in a protest the protester must show not only a significant error in the procurement process, but also that the error prejudiced it.”). To show prejudice, the protestor must demonstrate that there is a reasonable likelihood that, absent the error or violation of law, it would have been awarded the contract. *Alfa Laval Separation, Inc. v. United States*, 175 F.3d 1365, 1367 (Fed.Cir.1999).

Accordingly, the Secretary will review the agency's determination to determine whether there was a rational basis for its evaluation and whether the evaluation was consistent with applicable law. If the Secretary finds error, the Secretary will then examine whether the error was prejudicial to the protestor.

In its letter of protest, G4S asserts that both its Cost Proposal and its Technical Proposal were improperly evaluated. G4S raises numerous grounds of error. In specific, G4S raises the following issues:

G4S Issue 1(a):

1. The Commonwealth has made mistakes in the application of the evaluation process for the Cost Proposals. Additionally, the evaluation process actually used for Cost Proposals was arbitrary and capricious, giving unjust preference to proposed awardee Leimac and prejudicing other proposing vendors. These mistakes resulted in the incorrect scoring of all vendors, incorrect ranking of all vendors, selection of the incorrect three vendor finalists to provide the final evaluation phase of "Oral Presentations/Demonstrations" and, upon the basis that this final phase attributed to the point ranking for award, these mistakes have also resulted in a potential incorrect final award. This protest point is based on the following items which became apparent once G4S received access to open records in the bid file:

(a) Both the Leimac Cost Proposal (attached) and the proposed Master Agreement (attached) are both non-compliant with the RFP as Leimac's Technical Proposal (attached) limits inclusion of replacements for lost, damaged, stolen equipment at "up to fifteen percent (15%)" and Leimac's Cost Proposal fails to identify the required pricing for lost, damaged, stolen equipment replacements in excess of the included 15%, as is required by the RFP. Please reference the following: ...

Commonwealth response to Issue 1(a):

The scoring of the cost proposal was based on the average price of all three units with 270 points assigned (75% of the total 360 points for the cost proposal) and 90 points assigned for the price if lost, damaged, or stolen (25% of the total 360 points for the cost proposal). The cost listed shall reflect what the Department will be responsible for paying if the equipment is lost, damaged, or stolen. Leimac submitted \$0.00 on their Cost proposal Form and therefore, the Commonwealth will not be billed for Lost, Damaged, or Stolen equipment as stated in their Master Agreement. See Attachment C which is further clarification from Leimac stating they will not charge the Commonwealth in excess of the fifteen percent (15%) as stated in the Solicitation. ...

Section 70.010—Cost Scoring Criteria states "The bidder with the lowest Price receives the maximum score. " Section 50.130 states "Failure to submit as specified may result in a non-responsive proposal." Leimac submitted as specified in the proposal with a cost of \$0.00 and therefore, was not non-responsive.

The Secretary finds that OPS properly determined that the Leimac offer was in conformance with, and responsive to, the terms of the RFP. Thus, the agency's determination was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Commonwealth of Kentucky v. Yamaha*, 237 S.W.3d 203, 206 (Ky. 2007).

G4S Issue 1(b)(i):

(b) The Cost Evaluation methodology used by the Commonwealth is inconsistent with RFP Addendum 3, arbitrary and capricious.

(i) Per the "*Cost Proposal Score Sheet*", the Cost Evaluation methodology utilized applies 25% (90 points of the 360 total possible Cost Evaluation Points) based on "*Price if Lost, Damaged, or Stolen*" — An area in which the RFP directly confirms the Commonwealth has not incurred any cost during the past fiscal year because losses have been maintained within the included 15%.

Commonwealth response to Issue 1(b)(i):

Section 70.010—Cost Scoring Criteria states "The bidder with the lowest Price receives the maximum score. " The maximum score for this Solicitation was 360 points. The Commonwealth is not required to divulge, in the RFP document, the breakdown or any scoring weights that may be used during the evaluation[.] The scoring of the cost proposal was based on the average price of all three units with 270 points assigned (75% of the total 360 points for the cost proposal) and 90 points assigned for the price if lost, damaged, or stolen (25% of the total 360 points for the cost proposal). The cost listed shall reflect what the Department will be responsible for paying if the equipment is lost, damaged, or stolen. Leimac submitted \$0.00 on their Cost proposal Form and therefore, the Commonwealth will not be billed for Lost, Damaged, or Stolen equipment as stated in their Master Agreement. The Commonwealth did not err on the Cost Proposal scoring methodology.

The Secretary finds that OPS properly determined that the Leimac offer was in conformance with, and responsive to, the terms of the RFP and that OPS properly scored the Leimac offer. Accordingly, the agency's determination was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Commonwealth of Kentucky v. Yamaha*, 237 S.W.3d 203, 206 (Ky. 2007).

G4S Issue 1(b)(ii):

(ii) Per the "*Cost Proposal Score Sheet*", the Cost Evaluation methodology utilized granted 25% (90 points of the 360 total possible Cost Evaluation Points) to each/every proposed notification level, albeit the RFP and Master Contract indicate that the Commonwealth will place all participants on one notification level — "Basic." Properly scored for the Basic Notification level selected by the Commonwealth, G4S is the lowest priced Cost Proposal and G4S should have received the maximum cost Evaluation Score of 360. Please reference the following: ...

Commonwealth response to Issue 1(b)(ii):

Section 70.010—Cost Scoring Criteria states "The bidder with the lowest Price receives the maximum score. " The maximum score for this Solicitation was 360 points. The Commonwealth does not have to pre-assign how the points for the cost scoring will be broken down for the Cost Proposal Evaluation in the Solicitation document. The scoring of the cost proposal was based on the average price of all three units with 270 points assigned (75% of the total 360 points for the cost proposal) and 90 points assigned for the price if lost, damaged, or stolen (25% of the total 360 points for the cost proposal). The Commonwealth stated in the Solicitation document, addendum number 3, to Question #32: "*The descriptions define the types of services requested by the Department. The Department would like all three services quoted or those that the vendor is willing to provide.*" The Commonwealth did not know prior to the award that it would contract for the "Base notification". Inmates are not ranked while on Home Incarceration. For example all inmates must be low custody in order to be considered for the Home Incarceration Program; they are all the same level. Therefore the Department was interested in the cost of a different level of notification for all offenders/inmates on electronic monitoring; the Commonwealth did not intend on putting some on base notification and others on a different level. The Commonwealth thought about switching the way in which the Department was notified on anyone participating. The Department did not wish to classify an inmate and that is what we meant by saying all would be "basic" offenders, we did however want to learn more about how we could be notified. As stated previously, the cost listed shall reflect what the Department will be responsible for paying if the equipment is lost, damaged, or stolen. Leimac submitted, \$0.00 on their Cost proposal Form and therefore, the Commonwealth will not be billed for Lost, Damaged, or Stolen equipment as stated in their Master Agreement. The Commonwealth did not err on the Cost Proposal scoring methodology.

The Secretary finds that OPS properly scored the Leimac offer in accordance with the terms of the RFP. The agency's determination, therefore, was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Commonwealth of Kentucky v. Yamaha*, 237 S.W.3d 203, 206 (Ky. 2007)

G4S Issue 1(c):

(c) Leimac's price for Voice Recognition of "\$0.10" is below market standards in that it is approximately one-tenth to one-twelfth all other vendors (G4S \$0.95, STOP \$1.25, and Sentinel \$1.25. Per their proposal, Leimac is a reseller of the ShadowTrack Voice Recognition from manufacturer iSECUREtrac and NOT the original equipment manufacturer thus, they have the same costs (or likely higher) likely than these leading manufacturers. This significant price difference is indicative that the Leimac price for Voice Recognition is for fewer call than the RFP required; "*A minimum of five (5) calls per day shall be made to the offender to check the offender's status.*" The Commonwealth failed to demonstrate the Voice Recognition or verify this further. Please see reference:...

Commonwealth response to Issue 1(c):

Leimac's price for Voice Recognition is stated in the Master Agreement which was agreed upon and signed by all parties. Leimac responded as required in the Solicitation and stated in their cost proposal form that this cost would be \$0.10 to the Commonwealth. See Attachment B, Leimac's cost proposal form. The Commonwealth did not err in the technical proposal evaluation process.

The Secretary finds that OPS properly determined that the Leimac offer was in conformance with, and responsive to, the terms of the RFP and that OPS properly scored the Leimac offer. The agency's determination was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Commonwealth of Kentucky v. Yamaha*, 237 S.W.3d 203, 206 (Ky. 2007). The Commonwealth accepted Leimac's proposal contained in their RFP. The Commonwealth is not required to go "behind" the numbers contained in the RFP to ascertain a vendor's business model.

G4S Issue 2(a):

2. The Commonwealth has made mistakes in the application of the evaluation process for the Technical Proposals (attached). Additionally, the evaluation process actually used for Technical Proposals was arbitrary and capricious, giving unjust preference to proposed awardee Leimac and prejudicing other proposing vendors. These mistakes resulted in the incorrect scoring of numerous vendors, incorrect ranking of all vendors, and, upon the basis that this final phase attributed to the point ranking for award, these mistakes have also resulted in a potential incorrect final award.

(a) The Individual score sheets from each individual evaluation committee member are absent from the Open Records RFP file as confirmed by G4S' independent open records request and in-person review of the RFP hardcopy files. Thus there is insufficient information to corroborate the methodology and calculation used to arrive at the cumulative scores used to rank all vendors, select finalists, and recommend an award.

Commonwealth response to Issue 2(a):

The Technical, Cost, and Oral Presentation scoring sheets are required to be a part of the bid file. Such scoring sheets were in the bid file. Per the RFP, Section 60, the Commonwealth uses the consensus scoring methodology thus there are not any individual evaluation sheets received during the evaluation nor kept on file. All scoring is based on the requirements of the RFP and how well the vendor meets those requirements. All vendors were scored fairly and scoring was consistent.

Given OPS's explanation, the Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. *See Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen

1987) (“protester has burden of demonstrating the merits of its case.”); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(b):

(b) RFP Addendum 3, mandates “No” vendors can NOT use only GPS devices. Leimac is non-responsive to this requirement in that Leimac’s proposal confirms proposing only a GPS device for both “Radio Frequency Monitoring” and “Global Positioning System — Passive” (model 2150L) and only a GPS device for both “Cellular Radio Frequency” and “Global Positioning System Hybrid” (model 2250L). Please reference...

Commonwealth response to Issues 2(b):

Leimac responded with the following units:

Model 2250 for Radio Frequency — Cellular Active

Model 2150 for Radio Frequency — Passive

Model 5000 or model 2250 (hybrid) for Global Positioning System (GPS) — Cellular

Active Model 2150 for Global Positioning System (GPS) - Passive

Models 2150 and 2250 may be switched from RF to GPS or GPS to RF without changing any of the equipment. The question submitted by the vendor in Addendum 1, Question 4 which asked "Can we use only GPS devices? RF devices are an old technology that requires land lines, GPS devices do not require land lines. To which the Commonwealth responded with "No". Units were required for both Radio Frequency and Global Positioning System. KYDOC must be able to use RF equipment based on the fact that there are over 50 counties within the state that do not have GPS tower signals that will allow KYDOC to effectively monitor offenders in these counties. Leimac proposed a device that can be used as an RF or GPS monitor with the click of a button on the software program. The initial proposal did not state that the RF and GPS equipment had to be two separate pieces of equipment. Leimac was able to meet this need with one piece of equipment that met the RFP requirement and is more efficient in that the offender can be switched from one type of device to another without an additional appointment being made to change out equipment. All vendors were scored fairly and scoring was consistent.

Given OPS’s explanation, the Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The burden is not met by the protester's meredisagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. *See Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) (“protester has burden of demonstrating the merits of its case.”); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(c):

(c) G4S protests that the ShadowTrack voice recognition is NOT fully accessible via the proposed tracNET24 "shall be operational prior to submission of proposal" and "on one single log-in shall be utilized by DOC to access all three (3) systems and the single web-based system shall be operational prior to submission of proposal" This protest assertion is supported by multiple areas of the Leimac Technical Proposal and iSECUREtrac literature and press announcements below that speak to RF and GPS on the same login/web-based platform however, do NOT speak to integrated of Voice Recognition on one/the same platform. Additionally, upon the basis that the Commonwealth declined to test Voice Recognition, there is no confirmation that Leimac indeed meets the "Bundled" Voice Recognition requirements. In the absence of Leimac's demonstrated true integration on the proposed tracNet24 and ability to comply, including but not limited to "on one single log-in shall be utilized by DOC to access all three (3) systems and the single web-based system shall be operational prior to submission of proposal" and "If a participant/offender is enrolled on more than one monitoring device while on supervision (not simultaneously but consecutive) the system shall be capable of terminating the offender in one system while keeping the offender on monitoring for the current device. This is to avoid billing for two (2) systems simultaneously" then, per the RFP, the Leimac proposal must be rejected. Please refer to...

Commonwealth response to Issue 2(c):

According to Leimac's Proposal pg. 53 and 54 there is one login for all three services, voice recognition, radio frequency, and global positioning systems. Additionally Leimac specifically states it has the ability to terminate billing on one device when another device has been activated. All vendors were scored fairly and scoring was consistent.

Given OPS's explanation, the Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. See *Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) ("protester has burden of demonstrating the merits of its case."); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(d):

(d) The Master Agreement (attached) provides numerous "III. Negotiated Items" not included in Leimac's original. Leimac was given preference and permitted to include additional pricing for non-specified items "up to twenty (20) special hook ups shall be provided by the Contractor at no cost to the Kentucky Department of Corrections."

Commonwealth response to Issues 2(d):

Per the RFP, Section 90.010, Items to Be Negotiated, Terms and conditions that may be negotiated at the sole discretion of the Commonwealth include but are not limit to issues related to the Technical and/or Cost Proposals."

The Secretary finds that the RFP allowed for such negotiation. KRS Chapter 45A gives the Commonwealth the discretion to negotiate the final terms of a contract with the highest rated vendor. G4S has failed to show that the award was arbitrary, capricious, or contrary to law, and the protester bears the burden of proof. *See Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) ("protester has burden of demonstrating the merits of its case."); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(e):

(e) G4S was wrongly and inconsistently scored down for the criteria "How long must a RF or GPS charge to receive a full charge?" The Commonwealth scored G4S with two (2) out of ten (10) points since the vendor did not specify charging time for the receiver. The other pieces do require charging time and they were noted. Satellite Tracking Of People (STOP) responded with one (1) hour of charging time and was scored with ten (10) points. G4S states Leimac received four (4) points for a one hour charge time. G4S states they were scored inconsistently since they have a 2 hour charge time stated in their presentation document. (Paraphrased from original)

Commonwealth response to Issue 2(e):

The Commonwealth scored Leimac with four (4) out of ten (10) points for a six (6) hour charge time instead of the one (1) hour charge time G4S stated in their protest letter. G4S did not state in their documentation for the initial testing by the Department of Corrections a charging time for the receiver. G4S stated the other pieces required charging but did not note the time required, Therefore, G4S was scored accordingly. All vendors were scored fairly and scoring was consistent.

Given OPS's explanation, the Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. *See Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) ("protester has burden of demonstrating the merits of its case."); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(f):

(f) G4S states they were wrongly and inconsistently scored down for the criteria "Program Components" for the item "How many landline restrictions are there in order for a device to work properly?" The Commonwealth scored G4S [with four (4) points out of twenty (20) points stating Vendor responded with 8 or more restrictions based on the instruction data supplied. G4S states there are no restrictions that prohibit the device from working properly.].... (Bracketed portion was paraphrased from original)

Commonwealth Response to Issue 2(f):

Information in G4S proposal was inconsistent. It first stated that there were no restrictions however upon review, the instructions on the device gave numerous restrictions (8 or more) advising the Commonwealth to remove the features for the proper operation of the device. Please see the attached email. Page 2 indicates that the following items and services are prohibited on the Offender's phone line: Note: Some cases, installing a filter will bypass some digital services...answering machine/answering service, DSL Internet Service, Fax machine, Fax Modem or Dial Up Internet Service TV Satellite Dish that is installed through the phone line, splitters... Special phone services which may be available from the telephone company **are not allowed** since they may cause interference with the system. Verify that any Call Forwarding, Call Waiting, Caller ID Blocks or Answering Services are removed from the phone line while the E3 is in use. During Installation: It is important to make sure that the Offender has ALL phone services removed from the phone line prior to starting any installation. All vendors were scored fairly and scoring was consistent.

Given OPS's explanation, the Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. See *Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) ("protester has burden of demonstrating the merits of its case."); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(g):

(g) G4S was wrongly and inconsistently scored down for "Project Staffing" the criteria "How well does the person proposed for each key staff position reflect the needs of the project and do the presented staff have the necessary blend of skill sets to perform the work; are their resumes included? The Commonwealth scored G4S 10 (out of a possible 25) citing only that "ELMO Tech resumes were not provided." This is not accurate. ...

Commonwealth Response to Issue 2(g):

G4S provided brief biographical sketches for Elmo Tech staff instead of resumes and nothing on installers. Leimac did not provide any formal resumes but provided brief biographical sketches for all staff both iSECUREtrac and Leimac staff and installers. They were both scored with a "D" or a "2" which using our methodology was below average, meets many minimum expectations and satisfies all or most requirements. Satellite Tracking and Sentinel were both scored with a "C" or a "3" for providing all information. All vendors were scored fairly and scoring was consistent.

Given OPS's explanation, the Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. *See Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) ("protester has burden of demonstrating the merits of its case."); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(h):

(h) G4S was wrongly and inconsistently scored down for "Testing Equipment" the criteria "Did the Vendor provide an active GSP device and cellular RF device?" The Commonwealth scored G4S only 30 out of possible 50 nonetheless confirming "Vendor provided as required in the solicitation." This is not equitable – An accurate score for G4S meeting this requirement should be at least 40 -- This attributes to 10 additional technical proposal points for G4S.

Commonwealth Response to Issue 2(h):

The Commonwealth scored G4S with meeting the requirement and G4S was assigned thirty (30) points for this criteria which means it "met the requirement" and they were scored accordingly. All vendors were scored fairly and scoring was consistent.

The Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The allocation of points based on this section was a discretionary act by the agency evaluators. The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. *See Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) ("protester has burden of demonstrating the merits of its case."); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(i):

(i) G4S was wrongly and inconsistently scored down in the "G4S Orals Scoring Document" - for "Overview of History of G4S, integrity, honesty, experience" G4S was scored 18 out of possible 30 with the comment "Met the requirements, incumbent vendor." Please refer to the attached G4S Presentation pages 4 & 5 on "G4S Team Experience /Financial Stability." This confirms that, as the incumbent contractor in good standing for over the past 5 years, G4S has greater experience than any other vendor with KDOC's program - G4S should receive the full 30 points in this area - This attributes to 12 additional technical proposal points for G4S.

Commonwealth Response to Issue 2(i):

The Commonwealth scored G4S with meeting the requirement and G4S was assigned eighteen (18) points for this criteria which means it "met the requirement" and they were scored accordingly. All vendors were scored fairly and scoring was consistent.

The Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The allocation of points based on this section was a discretionary act by the agency evaluators. The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. *See Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) ("protester has burden of demonstrating the merits of its case."); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(j):

(j) G4S was wrongly and inconsistently scored down in the "G4S Orals Scoring Document" - for "Discuss charging time on equipment." G4S was scored 21 out of possible 35 with the comment "Satisfies the requirement; still questions on the charging time." This is not accurate - Please reference the attached G4S presentation (attached - complete) page 18 that calls out "G4S/ET E3® RF... >48 hour back-up battery, (charging time 2+ hours)" and page 19 that calls out "G4S/ET STaR® GPS 24+ hours battery depending on GPS mode (charging time 2+ hours)." G4S should receive the full 35 points in this area - This attributes to 14 additional technical proposal points for G4S.

Commonwealth Response to Issue 2(j):

The Commonwealth scored G4S with meeting the requirement and G4S was assigned twenty one (21) points for this criteria, which means it "met the requirement" and they were scored accordingly. All vendors were scored fairly and scoring was consistent.

The Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The allocation of points based on this section was a discretionary act by the agency evaluators. The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. *See Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) ("protester has burden of demonstrating the merits of its case."); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(k):

See G4S Issue 2(j) and Commonwealth Response to Issue 2(j).

G4S Issue 2(l):

(l) G4S was wrongly and inconsistently scored down in the "G4S Orals Scoring Document" - for "Vendor shall demonstrate the products' feature set..." G4S was scored 24 out of possible 30 with the comment "Vendor went over above average in demonstrating equipment" With this comment, G4S should have receives the full 30 points in this area - This attributes to 6 additional technical proposal points for G4S.

Commonwealth Response to Issue 2(l):

The Commonwealth scored G4S with meeting the requirement and G48 was assigned twenty four (24) points for this criteria, which means it "met the requirement" and they fully understand the basics and there response was above average. G4S was scored accordingly. All vendors were scored fairly and scoring was consistent.

The Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The allocation of points based on this section was a discretionary act by the agency evaluators. The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. *See Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) ("protester has burden of demonstrating the merits of its case."); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

G4S Issue 2(m):

(m) G4S was wrongly and inconsistently scored down in the "*G4S Orals Scoring Document*" - for "*Ability to track offenders...*" G4S was scored 8 out of possible 20 with the comment "Vendor did not meet the single logon based on their explanations." This is not accurate. Please reference the following: ...

Commonwealth Response to Issue 2(m):

The vendor gave the Commonwealth two different logins to access voice recognition, radio frequency, and global positioning systems in the proposal. The system could not be attained through one login as required. One single login was not provided. During Oral Presentations, G4S was unable to show the functionality of one single login. Once again, G4S was scored with a "0" or a "2" for below average, meets many minimum expectations and satisfies all or most requirements. All vendors were scored fairly and scoring was consistent.

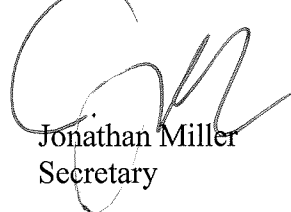
Given OPS's explanation, the Secretary finds that G4S has failed to show that the scoring was arbitrary, capricious, or contrary to law. The burden is not met by the protester's mere disagreement with the agency's determination. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988), and the protester bears the burden of proof. *See Matter of: American Identification Products, Inc.*, 87-2 CPD ¶42 (Comp.Gen 1987) ("protester has burden of demonstrating the merits of its case."); *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 782-83 (Fed.Cl. 1997); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

Accordingly, upon review of the record, G4S has not demonstrated an error in the procurement. G4S has failed to overcome the presumption of correctness. KRS 45A.280. The protest, therefore, must be **DENIED**. Pursuant to KRS 45A.280:

The decision of any official, board, agent, or other person appointed by the Commonwealth concerning any controversy arising under, or in connection with, the solicitation or award of a contract, shall be entitled to a presumption of correctness and shall not be disturbed unless the decision was procured by fraud or the findings of fact by such official, board, agent or other person do not support the decision.

In accordance with KRS 45A.285 (4), the decision by Finance Cabinet shall be final and conclusive.

Finance and Administration Cabinet



Jonathan Miller
Secretary

cc: Susan S. Noland, OPS
Jason E. Williams, counsel for Leimac